



0000205196

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

LEA MÁRQUEZ PETERSON– Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O’CONNOR

NOV 5 2021

DOCKETED BY
MM

IN THE MATTER OF:

DOCKET NO. S-21107A-20-0180

EDWARD EUGENE ENGEL a.k.a. EDDY ENGEL
a.k.a. ED ENGEL and SHARA ENGEL, husband and
wife,

ROSE MEMBER CAPITAL GROUP, LLC, a
Colorado limited liability company, and

BIOMED INET, LLC, an Arizona limited liability
company,

DECISION NO. 78293

Respondents.

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Open Meeting
October 26, 2021
Phoenix, Arizona

BY THE COMMISSION:

PROCEDURAL HISTORY

On June 17, 2020, the Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties (“Notice”) against Edward Eugene Engel, Shara Engel, Rose Member Capital Group, LLC and Biomed iNet, LLC (collectively “Respondents”), in which the Division alleged violations of the Securities Act of Arizona, A.R.S. § 44-1801 et seq. (“Securities Act”).

On July 17, 2020, the Division filed an Affidavit of Service for Respondent Edward E. Engel and Shara Engel (“Respondent Spouse”).

On the same date, Respondent Spouse filed a Request for an Extension of Time, stating that due to Respondent Edward E. Engel’s “declining mental and overall health,” she needed an extension of time to respond to the Notice.

1 On August 3, 2020, a Procedural Order regarding Consent to Email Service was issued.

2 On August 7, 2020, the Division filed a Response to Respondent Shara Engel's Motion for
3 Extension, stating that the Division had discussed Respondent Edward Engel's health with a
4 representative for the Engel family and that the Division agreed that it would not seek a Default Order
5 until at least September 1, 2020. The Division stated that it did not oppose an extension of time, until
6 September 1, 2020, for Respondent Edward Engel to file an Answer in this matter.

7 Also on August 7, 2020, by Procedural Order, Respondent Spouse Shara Engel's Request for
8 an Extension of Time, until September 1, 2020, was granted.

9 On September 1, 2020, Marc Windtberg of the law firm Windtberg & Zdancewicz, filed a
10 Notice of Appearance on behalf of Respondents.

11 Also on September 1, 2020, Respondents filed a Request for Hearing and an Answer to Notice.

12 On September 28, 2020, by Procedural Order, a telephonic pre-hearing conference was
13 scheduled for October 15, 2020.

14 On October 15, 2020, the telephonic pre-hearing conference was held as scheduled. The
15 Division and Respondents appeared through counsel. Discussion was held regarding dates for a
16 hearing and Respondents were directed to file information related to Respondent Edward Engel's
17 health condition by November 30, 2020.

18 On the same date, by Procedural Order, a hearing was scheduled to commence on March 8,
19 2021.

20 On November 30, 2020, Respondents filed a Motion Re: Ability of Eddy Engel to Participate
21 in this Proceeding and Request to Set Status Conference ("Motion"), stating that due process required
22 that this matter be dismissed because Respondent Edward Engel is not mentally competent to
23 participate in this administrative proceeding.¹ Respondents asserted that based on Respondent Edward
24 Engel's inability to consult with counsel, his medical records, and declarations from family members,
25 there was sufficient evidence to support that due process could not be satisfied and that this matter
26 should be dismissed. Alternatively, Respondents requested the appointment of counsel, the
27

28 ¹ Respondents citing *Dusky v. United States*, 362 U.S. 402 (1960) and *Drope v. Missouri*, 420 U.S. 162 (1975).

1 appointment of a guardian ad litem, and the appointment of a medical examiner to evaluate Respondent
2 Edward Engel and to report on his ability to participate in this proceeding.²

3 On December 15, 2020, the Division filed a Response to Respondents' Motion, stating that due
4 process did not require dismissal of this matter. The Division argued that due process is achieved in
5 administrative proceedings where there is notice and an opportunity to be heard at a meaningful time
6 and in a meaningful manner.³ The Division also asserted that Respondents had failed to establish that
7 Respondent Edward Engel was incompetent under the standard articulated in Arizona courts;⁴ that the
8 criminal standard for competency has been applied in juvenile dependency matters; that documents
9 submitted by Respondents were insufficient to establish that Respondent Edward Engel is incompetent;
10 and that the criminal rules of procedure do not apply to administrative proceedings.

11 On December 22, 2020, by Procedural Order, a telephonic pre-hearing conference was
12 scheduled for January 8, 2021, to hear oral argument on Respondents' Motion.

13 On December 28, 2020, Respondents filed a Reply to their Motion, reiterating their arguments
14 that due process requires that this matter be dismissed.

15 On January 8, 2021, a telephonic pre-hearing conference to hear oral argument on the pending
16 Motion was held as scheduled. The parties appeared through counsel. The Motion was taken under
17 advisement at the conclusion of the pre-hearing conference.

18 On February 22, 2021, the Division filed a Motion for Leave to Present Telephonic Testimony.

19 On February 26, 2021, by Procedural Order, the hearing scheduled to begin on March 8, 2021,
20 was vacated and continued to begin on June 1, 2021, to allow Respondents additional time to present
21 evidence of Respondent Edward Engel's ability to participate in this administrative proceeding and/or
22 to prepare for hearing. Also Respondents' claim that due process required dismissal of this matter was
23 found to be premature.

24 On May 11, 2021, the Division filed a Joint Motion to Continue Hearing, stating that the parties
25 jointly moved to continue the hearing because on April 30, 2021, Respondents forwarded to the

26 ² Respondents requested relief under the following rules: dismissal under Ariz. R. Crim. P. 11.1; a mental examination to
27 determine competence pursuant to Ariz. R. Crim. P. 11.2; appointment of counsel under Ariz. R. Crim. P. 6.1; or
appointment of a guardian ad litem pursuant to Ariz. R. Civ. P. 17.

28 ³ The Division citing *Wales v. Arizona Corp. Comm'n*, 249 Ariz. 263, 267 (App. 2020), review denied (July 28, 2020).

⁴ The Division citing *Kelly R. v. AZ. Dept. of Economic Sec.*, 213 Ariz. 17 (2006).

1 Division a competency report regarding Respondent Edward Engel, that the Division was currently
2 evaluating the competency report, and that the parties were attempting to resolve the issues in this
3 matter. The parties requested a pre-hearing conference for the purpose of scheduling new hearing dates.

4 On May 14, 2021, a Procedural Order was issued vacating the June 1, 2021, hearing and
5 scheduling a telephonic pre-hearing conference for June 10, 2021.

6 On May 24, 2021, Respondents filed a Motion to Reschedule Pre-Hearing Conference set for
7 June 10, 2021, stating that counsel for Respondents was unavailable and requested that a new pre-
8 hearing date be scheduled. Respondents' Motion further stated that the Division had no objection to
9 the request.

10 On May 25, 2021, by Procedural Order, the telephonic pre-hearing conference scheduled for
11 June 10, 2021, was continued to August 31, 2021.

12 On July 29, 2021, the parties filed a Joint Motion for Recommended Order of Dismissal ("Joint
13 Motion"), stating that the Division had retained a neuropsychologist to examine Respondent Edward
14 Engel and found that Respondent Edward Engel is not competent to participate in this proceeding. The
15 parties request that the Administrative Law Judge ("ALJ") issue a Recommended Order ("RO") for the
16 Commission's consideration, dismissing this matter without prejudice, pursuant to A.A.C. R14-3-109
17 (C). The Joint Motion states that the Division maintains that dismissal is not required as a matter of
18 due process, but that Respondent Edward Engel's incompetence is a proper basis for voluntary
19 dismissal, given that the parties stipulate to such. The Joint Motion also states that because the entity
20 Respondents- Biomed iNet, LLC and Rose Member Capital Group, LLC- are companies controlled by
21 Respondent Eddy Engel, dismissal of all Respondents is appropriate. Further, the parties stipulated to
22 dismissal of this proceeding, without prejudice, and provided that each party shall bear their own
23 attorney's fees and costs.

24 On August 30, 2021, by Procedural Order, the Joint Motion for the ALJ to issue a RO for the
25 Commission's consideration, was granted. Further, the pre-hearing conference scheduled for August
26 31, 2021, was vacated.

27 * * * * *

28 Having considered the entire record herein and being fully advised in the premises, the

1 Commission finds, concludes, and orders that:

2 **FINDINGS OF FACT**

3 1. On June 17, 2020, the Division filed a Notice against Edward Eugene Engel, Shara
4 Engel, Rose Member Capital Group, LLC and Biomed iNet, LLC, in which the Division alleged
5 violations of the Securities Act.

6 2. The Notice alleged that Respondents Edward Engel and Biomed iNet, LLC,
7 fraudulently sold securities to two investors in exchange for \$260,000.

8 3. The Division filed an Affidavit of Service for Respondent Edward E. Engel and Shara
9 Engel.

10 4. On September 1, 2020, Respondents filed a Request for Hearing and an Answer to the
11 Notice.

12 5. On October 15, 2020, a hearing was scheduled to commence on March 8, 2021.

13 6. On November 30, 2020, Respondents filed a Motion Re: Ability of Eddy Engel to
14 Participate in this Proceeding and Request to Set Status Conference, stating that due process required
15 that this matter be dismissed because Respondent Edward Engel was not mentally competent to
16 participate in this administrative proceeding.

17 7. On February 26, 2021, by Procedural Order, the hearing scheduled to begin on March
18 8, 2021, was vacated and continued to begin on June 1, 2021, to allow Respondents, among other
19 things, additional time to present evidence of Respondent Edward Engel's ability to participate in this
20 administrative proceeding and/or to prepare for hearing.

21 8. After a neuropsychological evaluation, the Division and Respondents stipulated that
22 Respondent Edward Engel is not competent to participate in this proceeding and that this matter should
23 be dismissed, without prejudice.

24 9. The parties stipulate that each party should bear their own attorney's fees and costs in
25 this matter.

26 10. The Division maintains that dismissal is not required as a matter of due process, but that
27 Respondent Edward Engel's incompetence is a proper basis for voluntary dismissal, given that the
28 parties stipulation.

CONCLUSIONS OF LAW

2. Respondents Biomed iNet, LLC and Rose Member Capital Group, LLC are companies controlled by Respondent Eddy Engel and dismissal of all Respondents, without prejudice is appropriate.

ORDER

IT IS FURTHER ORDERED that each party shall bear their own attorney's fees and costs in this matter.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

Lea M. Peterson
CHAIRWOMAN MARQUEZ PETERSON

James D. Kennedy
COMMISSIONER KENNEDY

Justin Olson
COMMISSIONER OLSON

Anna Tovar
COMMISSIONER TOVAR

James P. O'Connor
COMMISSIONER O'CONNOR



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5 day of November 2021.

Matthew J. Neubert
MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
YBK/ec

SERVICE LIST FOR:

EDWARD EUGENE ENGEL, ROSE MEMBER
CAPITAL GROUP, LLC, and BIOMED INET, LLC

DOCKET NO.:

S-21107A-20-0180

Marc Windtberg
WINDTBERG & ZDANCEWICZ, PLC
7600 N. 15th St., Ste 150
Phoenix, AZ 85020
Attorney for Respondents

Mark Dinell, Director
Securities Division
ARIZONA CORPORATION COMMISSION
1300 West Washington Street
Phoenix, AZ 85007
SecDivServicebyEmail@azcc.gov
Consented to Service by Email